

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

UNITED STATES OF AMERICA)	
)	CRIMINAL ACTION NO.
v.)	2:18cr21-MHT
)	(WO)
BRANDON E. PHALY)	

OPINION AND ORDER

This cause is before the court on the motion to continue made orally by the defendant Brandon E. Phaly during a telephone conference on July 19, 2018. For the reasons set forth below, the court finds that jury selection and trial, now set for August 6, 2018, should be continued pursuant to 18 U.S.C. § 3161(h)(7).

While the granting of a continuance is left to the sound discretion of the trial judge, see *United States v. Stitzer*, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making

public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

§ 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." § 3161(h)(7)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance would "result in a miscarriage of justice," § 3161(h)(7)(B)(i), or "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." § 3161(h)(7)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Phaly in a speedy trial. Phaly is currently being transported back to Montgomery, Alabama--the location of the instant

proceedings--from the Federal Medical Facility in Butner, North Carolina, where he was being evaluated to determine, among other things, his competency to stand trial and whether he was sane at the time of the offense. See 18 U.S.C. §§ 4241(a), 4242. At this time, however, his date of return remains unknown. Phaly, having yet to return to the district, has not had an opportunity to discuss with defense counsel the BOP's recommendations or how to proceed in this case. Thus, the current trial date, which is roughly two weeks away, does not provide defense counsel with enough time to confer with his client, determine the next steps, and, if necessary, prepare adequately and effectively for jury selection and trial. Accordingly, a continuance is warranted and necessary.

The government does not object to the continuance.

Accordingly, it is ORDERED as follows:

(1) The oral motion for continuance of defendant Brandon E. Phaly (doc. no. 30) is granted.

(2) The jury selection and trial, now set for August 6, 2018, are reset for September 4, 2018 at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.

DONE, this the 20th day of July, 2018.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE